No. 88-1905

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1989

EDDIE KELLER, *et al.*,
Petitioners,

VS.

STATE BAR OF CALIFORNIA, *et al.*,
Respondents.

On Writ of Certiorari to the California Supreme Court

BRIEF *AMICUS CURIAE* OF THE LAWYERS' COMMITTEE FOR THE ADMINISTRATION OF JUSTICE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS

The Lawyers' Committee for Administration of Justice ("the Committee"), comprised of the attorneys at law whose names are set forth below, are all duly admitted to practice in the courts of the State of California and are members of the State Bar of California. They have joined together for the sole purpose of filing with the Court this *amicus curiae* brief. The members of the Committee are familiar with the questions involved in this case and the scope of the presentation made by the parties in the courts below and believe that there is necessity for additional argument on the nature and purpose of the integrated bar, both in general concept and specifically in the case of the State Bar of California, as well as on the free speech issues from the perspective of individual lawyers in California. Respondents and petitioners have both consented to filing of this brief. Their written consents are filed herewith.

The Committee membership is as follows:

P. Terry Anderlini was the president of the State Bar of California from 1987-88 following three years on the Board of Governors. He is a partner in the San Mateo law firm of Anderlini, Guheen, Finkelstein & Emerick and is a member of the Commission on Judicial Performance of the State of California.

David M. Balabanian, a partner at McCutchen, Doyle, Brown & Enersen, has served as chair of the Conference of Delegates of the State Bar of California and as president of the Bar Association of San Francisco.

James J. Brosnahan is a partner at Morrison & Foerster in San Francisco. He is a past president of the Bar Association of San Francisco and has been a delegate to the Conference of Delegates of the State Bar of California for many years.

Edmund G. Brown was governor of California from 1959-66. He is with the Los Angeles firm of Hall, Hunt, Hart, Brown & Baerwitz.

Kevin R. Culhane is an immediate past vice-president of the State Bar of California and served on the board from 1986-89. He is a partner in the Sacramento law firm of Hanson, Boyd, Culhane & Watson and has also taught at the University of the Pacific, McGeorge School of Law since 1976.

Joanne M. Garvey is a partner at Heller, Ehrman, White & McAuliffe in San Francisco. A past president of the Bar Association of San Francisco, she also served on the State Bar Board of Governors from 1971-74 and was vice-president from 1973-74.

Alvin H. Goldstein, Jr. is a partner at Goldstein & Phillips in San Francisco and was the original chair of the State Bar's Section on Litigation. He was a Special Assistant to the Attorney General of the United States and was a judge on the Marin County Municipal Court from 1965-70.

Harry L. Hathaway, Hill, Farrer & Burrill, is president of the Los Angeles County Bar Association and the immediate past president of the American Bar Foundation.

Joan K. Irion, the 1987-88 president of the California Young Lawyers Association and its representative on the State Bar Board of Governors from 1988-89, is a partner at Heller, Ehrman, White & McAuliffe. She now serves on the Judicial Nominees Evaluation Commission of the State Bar and is on the board of directors of the Bar Association of San Francisco.

Kurt W. Melchior is a partner at Nossaman, Guthner, Knox & Elliott in San Francisco. A past member of the State Bar's Board of Governors, he presently serves as the chair of the State Bar delegation to the American Bar Association House of Delegates.

Dale Minami is a partner with Minami, Lew, Tamaki & Lee in San Francisco. He has served on the Judicial Nominees Evaluation Commission of the State Bar of California and received the president's Pro Bono Service Award in 1984.

Margaret M. Morrow is a partner at Quinn, Kully & Morrow in Los Angeles. She is immediate past president of the Los Angeles County Bar Association and has been a delegate to the Conference of Delegates of the State Bar for many years.

Roger Ruffin is a former judge of the Superior Court of California and currently is a partner at Ruffin & Rotwein in San Francisco. He has served on the board of directors of the Bar Association of San Francisco.

Daniel U. Smith is an appellate attorney in Kentfield in Marin County and a member of the California Academy of Appellate Lawyers. He was co-chair of the Appellate Courts Committee of the Bar Association of San Francisco and has served on the board of the San Francisco Trial Lawyers Association.

Sharp Whitmore, retired, was a partner with Gibson, Dunn & Crutcher. He is a former State Bar Board of Governors member and is the 1988 recipient of the Kutak Award from the American Bar Association.

Colin W. Wied was president of the State Bar of California from 1988-89 and chaired the Conference of Delegates of the State Bar in 1984. He is a partner at Kindel & Anderson in San Diego and Orange County.

Robert L. Winslow heads the trial department at the Los Angeles firm of Irell & Manella and is a former judge of the Superior Court of California. He is also a former member of the State Bar Section on Litigation.

Hoyt H. Zia is Senior Division Counsel at Motorola Law Department in Cupertino. He has served as president of the Asian/Pacific Bar of California and was recently elected the first president of the National Asian Pacific American Bar Association.

STATEMENT OF THE CASE

Petitioners, members of the California State Bar, have challenged the use of their dues to fund certain activities, including: an annual state bar convention, lobbying with regard to proposed legislation and the filing of *amicus curiae* briefs in pending litigation. As finally determined by the California Supreme Court in the decision below, *Keller v. The State Bar of California*, 47 Cal. 3d 1152 (1989), these challenged activities are germane to the statutory purposes of the California State Bar as enacted by the state legislature. This Court is presented with a single issue: Can the California legislature constitutionally establish, as an agency of the state, an integrated bar with the authority to take public positions—arrived at through debate and deliberation in a democratic, public forum—on proposed legislation and pending litigation?

SUMMARY OF ARGUMENT

Prior to the advent of the integrated bar in this country, there was no public forum for democratic debate and deliberation within the profession on matters affecting the administration of justice. California's integrated bar, created and established by the California legislature as a state agency, provides such a forum and gives the state thereby the benefit of the collective experience and expertise of the lawyers of the state on matters of legislation and law reform.

The intent and effect of the action of the California legislature in creating and maintaining an integrated bar with the freedom

and obligation to comment on issues of legislation and law reform are not to promote any particular point of view but to create a democratic public forum for deliberation and debate among the state's lawyers. Fees paid by the state's lawyers do not support the ideological activities of a private association but rather maintain this neutral, public forum.

The ideological neutrality of the California legislature's establishment of an integrated bar and the democratic forum which it maintains distinguish California's integrated bar from a labor union and distinguish this case from *Abood v. Detroit Bd. of Education*, 431 U.S. 209 (1977) and its progeny. Unlike a labor union, which is a private association with an ideological charter and purpose, the California State Bar is a state agency, created by the state legislature, which takes positions on public issues only as the result of democratic deliberation in an open, public forum. For purposes of First Amendment analysis, the California State Bar is unlike a private association and indistinguishable from other state agencies or commissions or political subdivisions.

The California legislature's creation of an integrated bar promotes rather than infringes the free speech rights of the state's lawyers. It provides a forum for debate and discussion within the profession by which members of the profession can solicit the support of the profession for their point of view without sacrificing any right to dissent or any other avenues of expression.

The holding of the California Supreme Court in the decision below is completely consistent with this Court's holding in *Abood, supra*. Under both decisions mandatory fees cannot be used to support political candidates and can be used only for purposes germane to the organization's statutory purpose. What distinguishes this case from *Abood* is the California legislature's legitimate purpose of engaging the experience and expertise of the state's lawyers on matters of legislation and law reform by providing a forum for debate, deliberation and dissemination of views.

ARGUMENT

I. THE PURPOSE OF THE STATE BAR OF CALIFORNIA AS ESTABLISHED BY STATUTE AND THE STATE CONSTITUTION REQUIRES INVOLVEMENT IN THE ADMINISTRATION OF JUSTICE

A. Participation in Legislation and Law Reform Is Central to the Statutory Purpose of the Integrated Bar

1. The Origins of the Integrated Bar Movement

When Herbert Harley and the American Judicature Society ("AJS") began the movement for an integrated bar during the early part of this century, the legal profession was represented by voluntary state bar associations that embraced only one-fourth of the entire bar. *Redeeming a Profession*, 2 J. Am. Judicature Soc'y. 105, 106 (1198). These voluntary bar associations, which were largely social institutions, did little or nothing to promote the proper administration of justice. As observed by Dean Wigmore:

> [T]he profession was a complacent, self-satisfied, genial fellowship of individual lawyers—unalive to the shortcomings of justice, unthinking of the urgent demands of the impending future, unconscious of their potential opportunities, unaware of their collective duty and destiny.

G. Brand, *Bar Organization and Judicial Administration—A New Horizon*, 34 J. Am. Judicature Soc'y. 38, 40 (1950).

Notwithstanding the complacency and impotence of these voluntary bar associations, they did represent the profession; not because they were well qualified to do so, but because there was no other representation for the profession and no other forum for deliberation within the profession on matters of public importance. The legal profession was, in effect, represented, controlled and governed by a club. 2 J. Am. Judicature Soc'y. 107 (1918).

Those in the forefront of the movement for bar unification recognized that, under this regime of disorganization and representation by club, lawyers were not fulfilling their obligations to society as "officers of the great department of justice [who] are as much a part of the Government and governmental machinery as

are the judges themselves." C. Goodwin, *The Public Function of the Bar*, 5 J. Am. Judicature Soc'y. 181, 181-82 (1921). The inadequacies of that regime demonstrated the need for internal governance of the profession.

> [A] great body politic consisting of thousands of judicial officers performing public functions of the greatest importance, exercising the largest influence on the moral well-being of society, and scattered over the entire territory of a state cannot function properly without some adequate machinery for its government. Time has demonstrated that such government cannot be successful when it is exercised spasmodically on the motion of volunteers and through the cumbersome and ineffective instrumentality of court proceedings.

Id. at 183. The United States was "the only civilized nation that [did] not have a self-governing bar and [was], as a result . . . the only one in which the office of lawyer [did] not carry with it the respect and esteem of the community." *Id.* at 184.

Those who deplored the disorganized and feeble posture of the bar in the first part of this century also recognized that the responsibilities of the profession were not confined to the competent, ethical representation of private clients but also embraced a wider obligation to the administration of justice and law reform. Roscoe Pound, Dean of Harvard Law School and one of the foremost proponents of the integrated bar, described the inadequacy to this task of the existing bar associations.

> They are not continuously at work. They have no means of surveying the whole field. They can give but a fraction of their time. We must find some agency which is always in operation, which works under conditions of permanence, independence, and assured impartiality, in which, therefore, the public may repose confidence.

R. Pound, *The Crisis In American Law*, 10 J. Am. Judicature Soc'y. 5, 9 (1926).

2. The Concept and Practice of the Integrated Bar

As conceived by Herbert Harley and the AJS, the solution to the problem of ineffective representation of the profession was to establish an integrated bar, which would represent all kinds of lawyers from all parts of the state. An integrated bar, in which all lawyers are members, is capable of taking on the tasks of enforcing professional standards and disciplinary rules, while mustering bar opinion and influence for the support of the judiciary and legislature with respect to the administration of justice.

The hallmark of the integrated bar is democratic governance. In all integrated state bars, all active members may hold state bar office and vote in elections. W. Glaser, Three Papers on the Integrated Bar, 4, (August 1960) (Available in University of California, Berkeley Law Library). Through election of a board of governors and a house of delegates the intergrated bar provides a representative forum. Glaser, at 4-11. Each state bar has a president and one or more vice-presidents, who are elected by ballot. Glaser, at 11.

The only requirement exacted from the individual lawyer is the payment of an annual fee, which goes to the establishment and maintenance of a democratic forum by which the voices of all the state's lawyers may be heard. After paying the fee, the lawyer can ignore the bar entirely. Or he can demonstrate his

> disaffection positively, by agitation for the repeal of bar rules, or their emasculation. He may organize others of his kind to resist enforcement by all lawful means. He may use his privilege to disparage unification and its agents in any words short of libel, and may extend his efforts to states two thousand miles away.

Bar Integration Is A National Movement, 22 J. Am. Judicature Soc'y. 215 (1939). On the other hand, each lawyer may participate within the democratic processes of the bar. "If any lawyer does not like the way the association which stands for his professional interests is managed let him become a member and do his kicking from within, where it may be constructive." 2 J. Am. Judicature Soc'y. 107 (1918).

The basic mission of the integrated bar is to participate in and improve the administration of justice. Bar integration recognizes the status of the lawyer as an essential part of the judicial machine, and further recognizes as "one of the historic roles of all lawyers—the honorable, forthright molding of public opinion." C. Thornal, *The Unified Bar—Integration or Disintegration*, 52 J. Am. Judicature Soc'y. 360, 362 (1969). The integrated bar draws on its collective expertise and wisdom to make a contribution to the legislative and judicial processes. Every state bar studies and proposes legislative and judicial reforms in areas, both procedural and substantive, that affect the administration of justice. *Id.* at 23.

3. The Integrated Bar in California

In 1927, the California Legislature adopted the State Bar Act, now codified at California Business & Professions Code § 6000 *et seq.*, which established an integrated bar. The California State Bar continues to function as the fulfillment of the idea of the integrated bar as conceived by the AJS and the founders of the unified bar movement.

The California State Bar is authorized to examine all applicants for bar admission (Cal. Bus. & Prof. Code § 6046), investigate complaints and make recommendations regarding conduct of members (Cal. Bus. & Prof. Code § 6043), enforce the law relating to the unlawful practice of law and illegal solicitation (Cal. Bus. & Prof. Code §§ 6030, 6125-131, 6150-154), administer an arbitration system for free disputes (Cal. Bus. & Prof. Code §§ 6200-6206), maintain a client security fund (Cal. Bus. & Prof. Code § 6140.5) and engage in other matters relating to the governance of the legal profession. *Keller, supra*, 47 Cal. 3d at 1160-61.

The California State Bar is also empowered to "aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice . . ." (Cal. Bus. & Prof. Code 6031(a)). This "has been called the 'laudable general purpose of the [State Bar] act.'" *Keller, supra*, at 1160, *quoting from Herron v. The State Bar of California*, 212 Cal. 196, 199 (1931). To fulfill this purpose, the State Bar has broad authority, under California law, to engage in lobbying and

amicus curiae activities. *Keller* at 1173. As articulated by the California Supreme Court in the opinion below:

> The drafting of a proposed law, the understanding of the relationship between the law and existing legislation, and the appreciation of the practical impact of the proposed legislation are matters which often require expert legal knowledge and judgment.

Id. at 1169.

The California State Bar's Conference of Delegates is comprised of over 500 delegates representing voluntary, city, county, minority, women's and other eligible bars from throughout the state. Each local, voluntary bar chooses a certain number of delegates based on the number of attorneys in a county and the number belonging to each local bar in that county. Delegates debate and vote on resolutions that advocate law reform or other changes in the administration of justice. Based on the successful resolutions, the conference adopts a legislative program for the following year.

B. California's Integrated Bar Provides a Democratic Forum for Deliberation by the Lawyers of the State on Matters Affecting the Administration of Justice

As established by the California legislature, California's integrated state bar provides a forum for deliberation among the lawyers of the state on issues affecting the administration of justice. The forum itself is without substantive content or ideology. It is a neutral, democratic framework within which the members of the profession can deliberate towards majority and dissenting views on issues regarding the administration of justice, including law reform and the proper implementation of existing laws. The state bar convention, challenged by petitioners, is a primary mechanism for that deliberative process. Lobbying on proposed legislation and the filing of *amicus curiae* briefs in pending litigation, activities also challenged by petitioners, are the primary means by which the Bar disseminates the results of that deliberative process.

The state's interest in establishing and maintaining this forum is obvious and compelling. Lawyers are officers of the court and, as such, agents of the state for the administration of justice. They are professionally trained and experienced through practice in the theory and reality of the formulation and implementation of the laws of the state. They grapple daily, through the representation of their clients, with the implications and impacts of the state's legislative and judicial pronouncements. It would, indeed, be shocking (as it was to the founders of the integrated bar movement) and wasteful if the state had no systematic means for tapping this resource—the collective experience and expertise of the state's lawyers as arrived at through a democratic, deliberative process—for the public welfare.

The alternative to this democratic forum is that the collective and deliberative views of the state's legal practitioners will be expressed on matters of law reform, if at all, only through the *ad hoc* efforts of private groups of attorneys. While such efforts undoubtedly also make a significant contribution to the processes of legislation and law reform, it has been the experience and judgment of the founders of the integrated bar movement, as well as the legislative judgment of the state of California and other states, that the public interest is better served by providing this forum: a state agency governed by democratic processes and open to all lawyers in the state on equal terms. As articulated by the Wisconsin Supreme Court in *Lathrop v. Donohue*, and quoted with approval by Justice Harlan in his concurring opinion:

> "We are of the opinion that the public welfare will be promoted by securing and publicizing the composite judgment of the members of the bar of the state on measures directly affecting the administration of justice and the practice of law. The general public and the legislature are entitled to know how the profession as a whole stands on such type of proposed legislation. This is a function an integrated bar, which is as democratically governed and administered as the State Bar, can perform much more effectively than can a voluntary bar association."

Lathrop v. Donohue, 367 U.S. 820, 862 (1961) (Harlan, J., concurring), *quoting Lathrop v. Donohue*, 10 Wis.2d 230, 239-40, 102 N.W.2d 404, 409-10.

The maintenance of a democratic, public forum for debate and deliberation among the state's lawyers on matters of legislation and law reform serves an additional public function. It makes lawyers, who are officers of the court and agents of the state and empowered by the state with responsibility for the administration of justice, more accountable to the general public by making their deliberations a matter of public record and scrutiny. This purpose is of special note and significance in California, where six of the 23 members of the State Bar's governing board are non-lawyers appointed by the governor and confirmed by the legislature. Those board members function as "consumer representatives," participating in, monitoring and voting on the official activities of the state's lawyers.

II. THE CALIFORNIA LEGISLATURE'S CREATION AND MAINTENANCE OF AN INTEGRATED BAR PROMOTES FREEDOM OF SPEECH

This Court held in *Lathrop v. Donohue, supra*, that a state may constitutionally establish an integrated bar, with mandatory membership and dues, and does not thereby create "any impingement upon protected rights of association." 367 U.S. at 843. No intervening decision has questioned or eroded that rule of law. The plurality opinion in *Lathrop* left open, however, the further question of whether an attorney's "constitutional rights of free speech are infringed if his dues money is used to support the political activities of the State Bar." 367 U.S. at 844. Justices Harlan, Frankfurter and Whittaker reached that question and found no infringement of free speech. Justices Black and Douglas reached the opposite result and dissented from the opinion of the Court.

The primary contention of petitioners here, as in *Lathrop*, is that their rights of free speech are infringed because the state has compelled them to pay fees as a mandatory condition of practicing their profession, and has then used those fees to finance the dissemination of "political" views which petitioners oppose. The

State of California has not, however, in fact, compelled fees with either that intention or that effect.

The intent and effect of the California legislature's creation and maintenance of an integrated bar with the freedom and obligation to comment on issues of legislation and law reform are not to promote any particular point of view but to create a forum for debate and deliberation through processes of representative democracy among the state's lawyers. The legislators who gave life to the integrated bar, and those who have maintained it as the law of the state, did not and could not have predicted the substantive outcomes of that forum. They did not and could not have predicted that the integrated bar would support or oppose their own ideologies or political philosophies or their own views on any particular issue of legislation or law reform. Those legislators did not undertake to tax lawyers in order to support any particular point of view, but rather sought to provide a forum for debate and deliberation with full democratic accommodation for both consensus and dissent. As expressed by Justice Harlan, in *Lathrop, supra*, with regard to Wisconsin's establishment of an integrated bar:

> In establishing the Integrated Bar Wisconsin has, I assume all would agree, shown no interest at all in favoring particular candidates for judicial or legal office or particular types of legislation. Even if Wisconsin had such an interest, the Integrated Bar does not provide a fixed, predictable conduit for governmental encouragement of particular views, for the Bar makes its own decisions on legislative recommendations and appears to take no action at all with regard to candidates. By the same token the weight lent to one side of a controversial issue by the prestige of government is wholly lacking here.
>
> In short, it seems to me fanciful in the extreme to find in the limited functions of the Wisconsin State Bar those risks of governmental self-perpetuation that might justify the recognition of a Constitutional protection against the "establishment" of political beliefs. A contrary conclusion would, it seems to me, as well embrace within its rationale the operations of the Judicial Conference of the United States,

> and the legislative recommendations of independent agencies such as the Interstate Commerce Commission and the Bureau of the Budget.

367 U.S. at 853.

The ideological neutrality of the California legislature's creation of its integrated bar and the democratic forum fostered thereby distinguish the California State Bar from a labor union and distinguish this case from *Abood v. Detroit Bd of Education*, 431 U.S. 209 (1977), and its progeny. A labor union is not an ideologically neutral forum for open, democratic debate. Unlike the California State Bar, which is a state agency maintained under legislative guidelines as a neutral forum, a labor union is a private association with a private ideological character, which is typically expressed in its constitution and charter. By its very existence it takes a stance in favor of collective labor relations and attendant political values. Unlike a state agency, and unlike the California State Bar, a labor union may and typically does support political parties and candidates for office.

Compelled support for a labor union is compelled support for a political association. When a labor union takes a position on pending litigation or on proposed legislation, that position cannot be separated from its ideological charter and political purpose for being. The political positions of the integrated bar are, on the other hand, like those of the agencies and commissions to which Justice Harlan compared the bar, the result of the deliberative processes of a public forum.

It is in this sense that the distinction relied on by the California Supreme Court in the decision below—that between a state agency and a labor union—is meaningful and decisive. The position taken by each organization on a particular piece of proposed legislation or pending litigation may be identical, and in each case that position has ideological and political content. What is distinctive and determinative is that in the union case the position is that of a private, political organization, but in the case of the state bar it is the outcome of public agency deliberations. Whereas, in the union case, the anti-union worker has been compelled to support the political activity of a private association

whose ideological posture he does not share, the lawyer who dissents from the position taken by the state bar on a particular piece of legislation or litigation has been compelled to support only a neutral forum which arrived at that position through deliberative consensus.

Justice Powell, in his concurring opinion in *Abood, supra*, drew a similar distinction:

> Compelled support of a private association is fundamentally different from compelled support of government. Clearly, a local school board does not need to demonstrate a compelling state interest every time it spends a taxpayer's money in ways the taxpayer finds abhorrent. But the reason for permitting the government to compel the payment of taxes and to spend money on controversial projects is that the government is representative of the people. The same cannot be said of a union, which is representative only of one segment of the population, with certain common interests. The withholding of financial support is fully protected as speech in this context.

431 U.S. at 259 n.13.

For purposes of First Amendment analysis, the California State Bar is, in all significant ways, an agency of government analogous to a local school board and is not a private association. Like a local school board, the State Bar's board of governors is a democratically selected, representative body with public, statutory purposes. Like a local school board, and unlike a union or other private association, it has no ideological charter or constitution and no private economic purpose; it takes ideological or political positions only as the result of deliberative, democratic processes in a public forum.

Indeed, the only significant differences between a local school board and the board of governors of the State Bar are that: (1) the school district and its board are supported by assessments to all persons who live within a certain geographical area and own property, whereas the State Bar and its board of governors are supported by assessments to all licensed lawyers; and (2) all persons within a local geographical area are eligible to elect the

school board, whereas all lawyers in good standing throughout the state are eligible to elect the board of governors (except for those "consumer representative" board members, who are appointed by the governor and confirmed by the state senate). For First Amendment purposes, these are distinctions without a difference. Both are "representative of only one segment of the population"—the school board is representative only of persons living in a particular geographical area and the board of governors is representative of a geographically diverse but probably much larger segment of the population who are all officers of the state's courts. There is absolutely no reason why positions taken by the board of governors on public issues abridge the freedom of speech of their constituents any more than do the positions of the local school board on behalf of their constituents, many of whom may disagree strenuously with those positions. What is significant in the case of both is that they are agencies of government and, unlike unions and other private associations, they have no inherent ideological character or private purpose.

Just as legislation establishing a local school district and a school board (funded by assessments on those who own property in the district) with authority to speak on behalf of the district does not abridge the free speech of property owners in the district, the creation by the California legislature of an integrated bar with a board of governors with authority to speak on behalf of the agency does not abridge in any degree the free speech of lawyers in the state. Indeed, the creation of the state bar, by providing a forum for discussion and debate within the profession, enhances rather than diminishes the free speech rights of the state's lawyers. It provides an additional forum for expression of their views without taking from them their right to dissent or any other avenues of expression. As reasoned persuasively by Justice Harlan in his concurrence in *Lathrop*:

> It seems to me these arguments [that mandatory contribution to an integrated bar diminishes the speech rights of members of the bar] have little force. In the first place, their supposition is that the voice of a dissenter is less effective if he speaks it first in an attempt to influence the action of a democratically organized group and then, if necessary, in

> dissent to the recommendations of that group. This is not at all convincing. The dissenter is not being made to contribute funds to the furtherance of views he opposes but is rather being made to contribute funds to a group expenditure about which he will have something to say. To the extent that his voice of dissent can convince his lawyer associates, it will later be heard by the State Legislature with a magnified voice.

367 U.S. at 856.

III. ANY BALANCING OF INTERESTS FAVORS THE PREROGATIVE OF THE CALIFORNIA LEGISLATURE TO MAINTAIN AN INTEGRATED BAR

As demonstrated in Part II above, the California legislature's use of mandatory fees from lawyers to create a democratic, neutral forum for discussion and debate among all lawyers in the state, and its provision for dissemination of those views through lobbying and *amicus curiae* briefs, do not diminish or infringe the rights of petitioners protected by the First and Fourteenth Amendments. There is, therefore, no need to balance petitioners' rights against the state's legitimate interest in creating and maintaining an integrated bar. Even assuming, however, for the sake of argument, that the functions of the integrated bar burden to some degree petitioner's free speech rights, that burden is justified by the state's interest in having a forum for discussion and debate among the lawyers of the state on matters of legislation and law reform.

Nothing in the prior decisions of this Court is to the contrary. Indeed, the holding of the California Supreme Court below is completely consistent with the holding of this Court in *Abood v. Detroit Bd. of Education, supra*.

Abood did not hold that mandatory dues could not be used for "political" purposes. To the contrary, the Court stated in *Abood* that:

> Nothing in the First Amendment or our cases discussing its meaning makes the question whether the adjective "politi-

> cal" can properly be attached to those beliefs the critical constitutional inquiry.

431 U.S. at 232. Under the holding in *Abood*, what distinguishes between permissible and impermissible expenditures of agency fees paid to a union is not the content of speech resulting from those expenditures but the relation of that speech to the statutory purpose. The only *per se* impermissible expenditure is in support of political candidates. Beyond that, the line that must be drawn is "between collective-bargaining activities, for which contributions may be compelled, and ideological activities unrelated to collective bargaining, for which such compulsion is prohibited." 431 U.S. at 236.

Similarly, in this case, the California Supreme Court held that mandatory bar fees could not be used for election campaigning and could be used only for matters related to the State Bar's statutory mission to aid "in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice." Cal. Bus. & Prof. Code § 6031. As concluded by the California court, and as demonstrated above, that statutory purpose, unlike that of collective bargaining representatives, clearly contemplates and includes the dissemination of views on proposed legislation and pending litigation through lobbying and amicus briefs. As further demonstrated above, that statutory purpose serves the state's compelling interest in engaging the experience and expertise of the state's lawyers on matters of legislation and law reform by providing a forum for debate, deliberation and dissemination of views.

CONCLUSION

For the foregoing reasons, the Lawyers' Committee for the Administration of Justice urges this Court to affirm the decision of the California Supreme Court.

Respectfully submitted,

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